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To: Examiner David M. Shay
Mail Stop AF
U.S. Patent & Trademark Office

From: Sanjay Bagade, Reg. No. 42,280
Asthmatx Inc.

Fax: (703) 872-9306 Date: November 11, 2004

Phone: (703) 308-2215 Pages: 6 (including fax cover)

Re: **NOTICE OF APPEAL**

Comments:

U.S. Patent Application No.: 09/436,455

Filing Date: November 8, 1999

Title: DEVICES FOR MODIFICATION OF AIRWAYS BY TRANSFER OF ENERGY

Inventor(s): Christopher J. DANEK et al.

Group Art Unit: 3739

Examiner: D. Shay

Docket No.: A-008-000

Papers enclosed herewith:

1. Transmittal (1 page)
2. Fee Transmittal + duplicate for fee processing (2 pages)
3. Petition for Extension of Time, 3 months (1 page)
4. Notice of Appeal (1 page)

PTO/SB/21 (09-04)

Approved for use through 07/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL
FORM

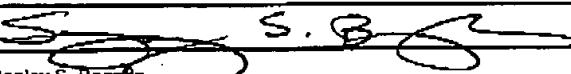
(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission 5

| | |
|------------------------|----------------------|
| Application Number | 09/436,455 |
| Filing Date | November 8, 1999 |
| First Named Inventor | Christopher J. DANEK |
| Art Unit | 3739 |
| Examiner Name | D. Shay |
| Attorney Docket Number | 435712000921 |

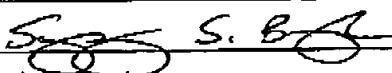
| ENCLOSURES (Check all that apply) | | |
|--|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <input type="checkbox"/> Fax Cover Sheet Remarks _____ |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | | |
|--------------|---|----------|--------|
| Form Name | Asthmatx, Inc. (Customer No. 41,728) | | |
| Signature |  | | |
| Printed name | Sanjay S. Bagade | | |
| Date | November 11, 2004 | Reg. No. | 42,280 |

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

| | | | |
|-----------------------|---|------|--------------|
| Signature |  | | |
| Typed or printed name | Sanjay S. Bagade | Date | Nov 11, 2004 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (10-04v2)

Approved for use through 07/31/2006, OMB 0851-0032
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

| | |
|-------------------------|-------------|
| TOTAL AMOUNT OF PAYMENT | (\$ 660.00) |
|-------------------------|-------------|

Complete If Known

| | |
|----------------------|----------------------|
| Application Number | 09/436,455 |
| Filing Date | November 8, 1999 |
| First Named Inventor | Christopher J. DANEK |
| Examiner Name | D. Shay |
| Art Unit | 3739 |
| Attorney Docket No. | 435712000921 |

METHOD OF PAYMENT (check all that apply)
 Check Credit card Money Order Other None
 Deposit Account:

| | |
|------------------------|----------------|
| Deposit Account Number | 503,051 |
| Deposit Account Name | Asthmatx, Inc. |

The Director is authorized to: (check all that apply)

 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) or any underpayment of fee(s)
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.
FEE CALCULATION**1. BASIC FILING FEE**

| Large Entity Fee Code (\$) | Small Entity Fee Code (\$) | Fee Description | Fee Paid |
|----------------------------|----------------------------|------------------------|----------|
| 1001 790 | 2001 395 | Utility filing fee | |
| 1002 350 | 2002 175 | Design filing fee | |
| 1003 550 | 2003 275 | Plant filing fee | |
| 1004 790 | 2004 395 | Reissue filing fee | |
| 1005 160 | 2005 80 | Provisional filing fee | |
| SUBTOTAL (1) | | (\$ 0.00) | |

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

| Total Claims | Extra Claims | Fee from below | Fee Paid |
|--------------------|--------------|----------------|----------|
| Independent | -20** = | x | |
| Multiple Dependent | -3** = | x | |

| Large Entity Fee Code (\$) | Small Entity Fee Code (\$) | Fee Description |
|----------------------------|----------------------------|--|
| 1202 18 | 2202 9 | Claims in excess of 20 |
| 1201 68 | 2201 44 | Independent claims in excess of 3 |
| 1203 300 | 2203 150 | Multiple dependent claim, if not paid |
| 1204 98 | 2204 44 | ** Reissue independent claims over original patent |
| 1205 18 | 2205 9 | ** Reissue claims in excess of 20 and over original patent |
| SUBTOTAL (2) | | (\$ 0.00) |

**or number previously paid, if greater. For Reissues, see above

3. ADDITIONAL FEES

| Large Entity | Small Entity | Fee Description | Fee Paid |
|-----------------------------------|---------------|--|--------------------|
| Fee Code (\$) | Fee Code (\$) | | |
| 1051 130 | 2051 65 | Surcharge - late filing fee or oath | |
| 1052 50 | 2052 25 | Surcharge - late provisional filing fee or cover sheet | |
| 1053 130 | 1053 130 | Non-English specification | |
| 1812 2,520 | 1812 2,520 | For filing a request for ex parte reexamination | |
| 1804 920* | 1804 920* | Requesting publication of SIR prior to Examiner action | |
| 1805 1,840* | 1805 1,840* | Requesting publication of SIR after Examiner action | |
| 1251 110 | 2251 55 | Extension for reply within first month | |
| 1252 430 | 2252 215 | Extension for reply within second month | 490.00 |
| 1253 980 | 2253 490 | Extension for reply within third month | |
| 1254 1,530 | 2254 766 | Extension for reply within fourth month | |
| 1255 2,080 | 2255 1,040 | Extension for reply within fifth month | |
| 1401 340 | 2401 170 | Notice of Appeal | 170.00 |
| 1402 340 | 2402 170 | Filing a brief in support of an appeal | |
| 1403 300 | 2403 150 | Request for oral hearing | |
| 1451 1,510 | 1451 1,510 | Petition to institute a public use proceeding | |
| 1452 110 | 2452 55 | Petition to revive - unavoidable | |
| 1453 1,370 | 2453 885 | Petition to revive - unintentional | |
| 1501 1,370 | 2501 885 | Utility issue fee (or reissue) | |
| 1502 490 | 2502 245 | Design issue fee | |
| 1503 680 | 2503 330 | Plant issue fee | |
| 1480 130 | 1460 130 | Petitions to the Commissioner | |
| 1807 50 | 1807 50 | Processing fee under 37 CFR 1.17(q) | |
| 1806 180 | 1806 180 | Submission of Information Disclosure Stmt | |
| 8021 40 | 8021 40 | Recording each patent assignment per property (times number of properties) | |
| 1809 790 | 2809 395 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 1810 790 | 2810 395 | For each additional invention to be examined (37 CFR 1.128(b)) | |
| 1801 790 | 2801 395 | Request for Continued Examination (RCE) | |
| 1802 900 | 1802 900 | Request for expedited examination of a design application | |
| Other fee (specify) | | | |
| *Reduced by Basic Filing Fee Paid | | SUBTOTAL (3) | (\$ 660.00) |

(Complete if applicable)

| | | | | | |
|-------------------|---|-----------------------------------|--------|-----------|--------------|
| Name (Print/Type) | Sanjay S. Bagade | Registration No. (Attorney/Agent) | 42,280 | Telephone | 650-810-1100 |
| Signature |  | | | Date | 11/11/2004 |

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